

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

KYRA CANNING,  
Plaintiff,

v.

Civil Action No.: 3:20-cv-401

WILLIAM SMITH, *et al.*,  
Defendants.

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JARROD BLACKWOOD, *et al.*, individually  
and on behalf of a class of similarly situated  
individuals,  
Consolidated Plaintiffs,

v.

[Previously Civil Action No.: 3:20-cv-444]

JOHN/JANE DOES, I-X,  
Consolidated Defendants.

**BLACKWOOD PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR A  
MODIFICATION OF THE PROTECTIVE ORDERS**

*See* ECF DOCs. 16 and 61 (incorporating ECF Doc. 58 by reference).

Comes now the *Blackwood v. Doe* plaintiffs, by counsel, and for their brief in support to  
of their motion to modify the protective orders entered in this case at ECF Doc. 16 and 61  
(incorporating ECF Doc. 58 by reference), so that the protective orders shall expire effective on  
July 1, 2022, as to the *Blackwood* plaintiffs, state as follows.

**I. Procedural History**

The cases consolidated under 3:20-cv-401 concern the dispersal of a peaceful assembly  
by members of the Richmond Police Department on June 1, 2020, at Lee Circle, in Richmond,  
Virginia. The complaint of the *Blackwood* plaintiffs was filed on June 16, 2021. **Case 3:20-cv-**

**444 ECF Doc. 1.** It was filed against unknown individual officers of the Richmond Police Department.

In an order entered on July 6, 2020 (**Case 3:20-cv-401 ECF Doc. 16**), the Court permitted a pre-service Fed. R. Civ. Pro. 45 subpoena to obtain the names and badge numbers of the officers involved in the subject incident, or alternatively the City could provide a “complete list of names and badge numbers of the officers who were involved and/or present during the events that gave rise to the Complaint.” This Order provided that the parties “shall keep the list and the identities on the list confidential and shall not disclose the identities of the officers without first obtaining leave of the Court.” **Case 3:20-cv-401 ECF Doc. 16 at 2.** The City subsequently produced a list of seventy-one names. *See Case 3:20-cv-401 ECF Doc. 23.*

On October 27, 2020, the Court ordered the parties to generate a discovery plan. **Case 3:20-cv-401 ECF Doc. 47.** The agreed discovery plan (**Case 3:20-cv-401 ECF Doc. 58**) proposed phased discovery. The agreed plan listed several particular categories of information that the parties agreed to exchange in Phase I at to the June 1 incident. **Case 3:20-cv-401 ECF Doc. 58 at 3-5.** It contemplated the appointment of a discovery special master, and stated:

The Parties will work with the Special Master to formulate an appropriate litigation protective order. Until the protective order is entered, the Parties agree that all discovery will be conducted confidentially, and that the terms of the Order entered in *Canning v. Smith et al.*, 03-20-cv-401, ECF No. 16 with respect to the identity of all officers remains in full force and effect unless modified. Once a protective order is entered, the Parties expect that all further discovery will be done pursuant to that protective order.

The Court entered an order on December 10, 2020, approving of the joint discovery plan. **Case 3:20-cv-401 ECF Doc. 61.**

The *Blackwood* plaintiffs have now reached a settlement of their claims with the City and the City’s agents. The parties have agreed that the protective orders should expire effective July

1, 2022, and agreed to join in a motion requesting the Court to modify the protective orders accordingly.

## II. Law and Analysis

Protective orders are intended “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. Pro. 26(c)(1). Ordinarily, a protective order is no more than a stopgap measure. *In re Grand Jury Subpoena (Under Seal)*, 836 F.2d 1468, 1476 (4th Cir. 1988). A protective order may be modified under Rule 26 for sufficient cause. *Id.*

The Court implemented a protective order in this case precisely as a stopgap measure. In the chaotic summer of 2020, the Court wanted to allow the plaintiffs access to information identifying potential defendants but to control the dissemination of that information. ECF Doc. 16. It was a reasonable measure to protect officers and the City from “annoyance, embarrassment, [and] oppression.” Fed. R. Civ. Pro. 26(c). As is clear from the discovery plan, ECF Docs. 58, the parties expected the existing protective order to be replaced with a more carefully negotiated protective order. As this did not happen, *but see* ECF Docs. 67-68, 74-75 (requesting a modification), the obligations concerning the protective order were addressed as part of the settlement terms. In this case concerning the free speech rights of the Plaintiffs, the parties agreed the protective order should expire effective July 1, 2022. This represents the efforts of the parties to “resolve the dispute,” *see* Fed. R. Civ. Pro. 26(c)(1), and the Court should therefore find sufficient cause exists to modify the protective order, so that the protective orders shall expire effective on July 1, 2022, as to the *Blackwood* plaintiffs.

Wherefore, the *Blackwood* plaintiffs respectfully request this Court to modify the protective orders entered in this case at ECF Doc. 16 and 61 (incorporating ECF Doc. 58 by

reference), so that the protective orders shall expire effective on July 1, 2022, as to the *Blackwood* plaintiffs.

**Respectfully submitted,**

**Plaintiffs Jarrod Blackwood, Megan Blackwood,  
Ryan Tagg, Christopher Gayler, and Keenan  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on the February 10, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send an electronic notification to all counsel of record who have appeared in this matter, including the following:

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